

## §95.819

*Report and Order and Memorandum Opinion and Order*, FCC 99-239 (released September 10, 1999) may continue to participate in the installment payment program. Eligible Licensees are those that were current in installment payments (*i.e.* less than ninety days delinquent) as of March 16, 1998, or those that had properly filed grace period requests under the former installment payment rules. All unpaid interest from grant date through election date will be capitalized into the principal as of Election Day creating a new principal amount. Installment payments must be made on a quarterly basis. Installment payments will be calculated based on new principal amount as of Election Day and will fully amortize over the remaining term of the license. The interest rate will equal the rate for five-year U.S. Treasury obligations at the grant date.

(c) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$3 million for the preceding three years.

(d) *Bidding credits.* A winning bidder that qualifies as a small business, as defined in this subsection, or a consortium of small businesses may use the bidding credit specified in §1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in accordance with §1.2110(f)(2)(i) of this chapter.

(e) Winning bidders in Auction No. 2, which took place on July 28-29, 1994, that, at the time of auction, met the qualifications under the Commission's rules then in effect, for small business status will receive a twenty-five percent bidding credit pursuant to Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Report and Order and Memorandum Opin-

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ion and Order, FCC 99-239 (released September 10, 1999).

[64 FR 59660, Nov. 3, 1999, as amended at 66 FR 9219, Feb. 7, 2001; 67 FR 45378, July 9, 2002; 68 FR 43001, July 21, 2003]

### §95.819 License transferability.

(a) A 218-219 MHz Service system license, together with all of its component CTS licenses, may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in §1.948 of this chapter. For licenses acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), designated entities must comply with §§1.2110 and 1.2111 of this chapter (see §1.948(a)(3) of this chapter).

(b) If the transfer, assignment, sale, or gift of a license is approved, the new licensee is held to the construction requirements set forth in §95.833.

[66 FR 9219, Feb. 7, 2001]

### §95.823 Geographic partitioning and spectrum disaggregation.

(a) *Eligibility.* Parties seeking Commission approval of geographic partitioning or spectrum disaggregation of 218-219 MHz Service system licenses shall request an authorization for partial assignment of license pursuant to §1.948 of this chapter.

(b) *Technical standards—(1) Partitioning.* In the case of partitioning, requests for authorization of partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC-recognized service area (*i.e.* Economic Areas) is utilized or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds, to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC-recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of

FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum maybe disaggregated in any amount.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignments of licenses that propose combinations of partitioning and disaggregation.

(c) *Provisions applicable to designated entities—(1) Parties not qualified for installment payment plans.* (i) When a winning bidder (partitionor or disaggregator) that elected to pay for its license through an installment payment plan partitions its license or disaggregates spectrum to another party (partitionee or disaggregatee) that would not qualify for an installment payment plan, or elects not to pay for its share of the license through installment payments, the outstanding principal balance owed by the partitionor or disaggregator shall be apportioned according to §1.2111(e)(3) of this chapter. The partitionor or disaggregator is responsible for accrued and unpaid interest through and including the consummation date.

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire *pro rata* amount of the outstanding principal balance on or before the consummation date. Failure to meet this condition will result in cancellation of the grant of the partial assignment application.

(iii) The partitionor or disaggregator shall be permitted to continue to pay its *pro rata* share of the outstanding balance and, if applicable, shall receive loan documents evidencing the partitioning and disaggregation. The original interest rate, established pursuant to §1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

(iv) A default on the partitionor's or disaggregator's payment obligation will affect only the partitionor's or disaggregator's portion of the market.

(2) Parties qualified for installment payment plans.

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation.

(ii) Each party may be required, as a condition to approval of the partial assignment application, to execute loan documents agreeing to pay its *pro rata* portion of the outstanding principal balance due, as apportioned according to §1.2111(e)(3) of this chapter, based upon the installment payment terms for which it qualifies under the rules. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to §1.2110(f)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for its portion of the partitioned market.

(iii) A default on an obligation will affect only that portion of the market area held by the defaulting party.

(d) *Construction requirements—(1) Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the applicable construction requirements set forth in §95.833 of this part for their respective partitioned areas. If either licensee failed to meet its requirement in §95.833 of this part, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the requirement in §95.833 of this part for the entire market. If the partitionor fails to meet the requirement in §95.833 of this part, however, only its renewal application would be subject to forfeiture at renewal.

(2) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they

each will share responsibility for meeting the applicable construction requirements set forth in § 95.833 of this part for the geographic service area. If parties choose this option and either party fails to do so, both licenses would be subject to forfeiture at renewal. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the requirement in § 95.833 of this part for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must include the above-referenced certification as to which of the construction options is selected.

(4) Responsible parties must submit supporting documents showing compliance with the respective construction requirements within the appropriate construction benchmarks set forth in § 95.833 of this part.

[64 FR 59662, Nov. 3, 1999, as amended at 67 FR 46378, July 9, 2002]

#### SYSTEM REQUIREMENTS

##### § 95.831 Service requirements.

Subject to the initial construction requirements of § 95.833 of this subpart, each 218–219 MHz Service system license must demonstrate that it provides substantial service within the service area. Substantial service is defined as a service that is sound, favorable, and substantially above a level of service which might minimally warrant renewal.

[64 FR 59662, Nov. 3, 1999]

##### § 95.833 Construction requirements.

(a) Each 218–219 MHz Service licensee must make a showing of “substantial service” within ten years of the license grant. A “substantial service” assessment will be made at renewal pursuant to the provisions and procedures contained in § 1.949 of this chapter.

(b) Each 218–219 MHz Service licensee must file a report to be submitted to

inform the Commission of the service status of its system. The report must be labeled as an exhibit to the renewal application. At minimum, the report must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its 218–219 MHz Service systems;

(4) A list, including addresses, of all component CTSs constructed; and

(5) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(c) Failure to demonstrate that substantial service is being provided in the service area will result in forfeiture of the license, and will result in the licensee’s ineligibility to apply for 218–219 MHz Service licenses for three years from the date the Commission takes final action affirming that the 218–219 MHz Service license has been canceled pursuant to § 95.813 of this part.

[64 FR 59662, Nov. 3, 1999]

##### § 95.835 Station identification.

No RTU or CTS is required to transmit a station identification announcement.

##### § 95.837 Station inspection.

Upon request by an authorized Commission representative, the 218–219 MHz Service system licensee must make any component CTS available for inspection.

#### TECHNICAL STANDARDS

##### § 95.851 Certification.

Each CTS and RTU transmitter must be certificated for use in the 218–219 MHz Service in accordance with subpart J of part 2 of this chapter.

[63 FR 36611, July 7, 1998]